beneficiary as that, when such certificate is issued equities in favor of the beneficiary are born, of such merit that the insured member has no power to defeat them. . . . As between the original and subsequent beneficiaries the whole matter seems to be rather a question of equities (as opposed to vested interest in the first) and the stronger and better equity must prevail."

That is, wherever sound equities are existing in the first beneficiary, the member should be declared estopped to change his designation; and such estoppel being in force against the insured, it is equally in force and stands against the second volunteer beneficiary.

Some courts have designated, as vested, the right of the original beneficiary to take the benefit, where he had made the payments under an agreement, sufficiently specific, between himself and the member, even though the member had subsequently changed his designation.[8] But it will be found that the use of the term "vested" results rather from haste or convenience than from full consideration of the question. "Vested interest" and "superior equities" are in many aspects analogous, and may be readily confused; but the clearer view is that announced in the California decisions.[9]

J. C. A.

CONFLICT OF LAWS—LIMITATION OF LIABILITY ON THE HIGH SEAS—The Titanic disaster, bringing in its wake claims amounting to millions of dollars, at once raises the question as to whether the federal statute limiting the shipowner's liability is applicable. The District Court for the Southern District of New York has decided that it does not apply,[1] the case is now pending before the United States Supreme Court, whose decision will be a leading one.

The statute[2] limits the liability of the owner of a vessel to his interest in the vessel and the freight pending, and in its terms is sweeping, referring to "the owner of any vessel," and not merely to American vessels. The question of its application to foreign vessels has been the subject of numerous decisions and in the case of collision between two ships is fairly well settled. The case of *The Scotland*[3] was the first case on this point. Here the British steamer *Scotland* came into collision with the American ship *Kate Dyer,* and

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[8] Stronge v. Supr. Lodge K. of P., 189 N. Y. 346, 82 N. E. Rep. 433 (1907); Supr. Council v. Tracy, 169 Ill. 123, 48 N. E. Rep. 401 (1897); Leaf v. Leaf, 92 Ky. 166, 17 S. W. Rep. 354 (1891); *semble,* Supr. Coun. C. M. B. A. v. Murphy, 65 N. J. Eq. 60, 55 Atl. 497 (1903).

[9] In accord with the view of the California courts expressed in Jory v. Supr. Council, see the rulings in the cases, *supra,* n. 6.

[1] The Titanic, 209 Fed. Rep. 501 (1914).

[2] U. S. Comp. St. 1901, pp. 2943-2945, §§4282-4289.

[3] 105 U. S. 24 (1881).

the owners of *The Scotland* claimed exemption upder the American act. Judge Bradley, in his opinion, said:

"But, if a collision occurs on the high seas, where the law of no particular State has exclusive force, but all are equal, any *forum* called upon to settle the rights of the parties would *prima facie* determine them by its own law as presumptively expressing the rules of justice; but if the contesting vessels belonged to the same foreign nation, the court would assume that they were subject to the laws of their nation carried under their common flag, and would determine the controversy accordingly. If they belonged to different nations, having different laws, since it would be unjust, to apply the laws of either, to the exclusion of the other, the law of the *forum*—that is, the maritime law as received and practiced therein —would properly furnish the rule of decision."

The United States Supreme Court accordingly held that as this was the case of a collision between British and American vessels, the American statute was applicable, being the law of the *forum.* This case has been repeatedly followed both on its part[4] and in respect to the *dictum* as to two foreign ships of the same nation,[5] with the additional qualifications laid down in *The Belgenland.*[6]

"That is the maritime law, as administered by both nations to which the respective ships belong, be the same in both respect to any matter of liability or obligation, such law, if shown to the court, should be followed in that matter in respect to which they agree. . . . "

But where one vessel alone is wrecked there are no Supreme Court decisions; and those in the District and Circuit Courts are not very satisfactory. *The John Bramall*[7] held that a British ship stranded on the coast of the United States could take advantage of the American statute because the loss occurred within the territorial limits of the United States. While in *Levison* v. *Oceanic Steam Navigation Company,*[8] a British steamer wrecked off the coast of Nova Scotia was held entitled to exemption on the theory that the statute was the adoption of a general maritime principle applicable to the owners of foreign as well as American vessels. This case, however, would be overruled by the later *dictum* in *The Scotland,* which expressly states that an injury to a British ship in British waters would be governed by British law. Nevertheless the same result was reached in *The State of Virginia*[9]

[4] The Belgenland, 114 U. S. 355 (1884); The Great Western, 118 U. S. 520 (1885); La Bourgoyne, 210 U. S. 95 (1907); *In re* Leonard, 14 Fed. Rep. 53 (1882).

[5] The Eagle Point, 142 Fed. Rep. 73 (1906).

[6] 114 U. S. 355 (1884).

[7] 10 Ben. 495, Fed. Cas. No. 7334 (1879).

[8] 15 Fed. Cas. 422 (1876).

[9] 60 Fed. Rep. 1018 (1894).

where the court said that the case of a ship wrecked on the coast of the country to which she belongs was the same as a collision between two ships of the same nation and then applied the American law to an English ship wrecked in English waters, which is obviously incorrect. There are also numerous cases where the limiting statute has been applied to foreign vessels simply because the fact that it was a foreign ship was not raised;[10] but as the court will never apply foreign laws unless they are called to their attention, they are not authorities.

It is of course fundamental that a law can have no extra-territorial force; but it is also practically universally held that a vessel on the high seas is a detached floating portion of the country whose flag she flies and is exclusively within the influence of its laws so far as the internal economy of the vessel is concerned.[11] And on the theory that the law of the flag should govern in all cases on the high seas, unless there is some good reason to the contrary, there seems to be a possible solution of the question. In the case of two vessels of the same nationality, there is no element present which can introduce any other law than that of the flag except the fact that the case may be tried in the court of another country. Since this has not been held a sufficient reason for departing from the law of the flag in the case of two ships, and as there are no more reasons, in the case where one ship is injured by collision with some floating object belonging to no country, and which carries no law, or where a vessel founders on the high seas for no appreciable cause, the result should be the same and the law of the flag should apply. Where, however, two vessels of different countries, carrying different laws, come into collision, we have two laws equally applicable from the start; and since one court cannot decide the case under two different laws, the courts have compromised on the law of the *forum,* on the theory of *The Scotland* that it would be unjust to either party to apply the law of either to the exclusion of the other. Of course this result is simply an arbitrary rule of convenience. *T. S. P.*

CONSTITUTIONAL LAW—COMMERCE CLAUSE—MUNICIPAL LICENSE AND REGULATION OF EXPRESS COMPANIES—A municipal ordinance of the Board of Aldermen of the City of New York required, *inter alia,* a local license to be obtained as a condition precedent to conducting an express business within the municipality, and also

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[10] The Strathdon, 89 Fed. Rep. 374 (1898).

[11] The Scotia, 14 Wall. 170 (1871); Crapo v. Kelley, 16 Wall. 610 (1872); Wilson v. McNamee, 102 U. S. 572 (1880); *In re* Ah Sing, 13 Fed. Rep. 286 (1882); *In re* Moncan, 14 Fed. Rep. 44 (1882); The Lamington, 87 Fed. Rep. 752 (1898); McDonald v. Mallory, 77 N. Y. 546 (1879); Wheat. Int. Law (Dana's Ed.), §106; 3 Whart. Int. Law Dig. 228; Whart. Confl. Laws, §356; 1 Kent Comm. 26.